

HOGAN & HARTSON  
L.L.P.

DAVID L. SIERADZKI  
PARTNER  
(202) 637-6462  
DLSIERADZKI@HHLAW.COM

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910  
WWW.HHLAW.COM

July 17, 2002

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service,  
CC Docket No. 96-45;  
Multi-Association Group (MAG) Plan,  
CC Docket Nos. 00-256, 98-77, and 98-166**

Dear Ms. Dortch:

The Competitive Universal Service Coalition ("CUSC") made an *ex parte* presentation today regarding the proceedings listed above to Commissioner Michael J. Copps and his Senior Legal Advisor, Jordan Goldstein. Participants in this presentation included Gene DeJordy, Vice-President of Regulatory Affairs of Western Wireless Corp.; Mark Rubin, Director of Federal Government Affairs of Western Wireless Corp.; and the undersigned. The meeting addressed topics that are summarized in the attached hand-out, which was distributed during the meeting.

If you have any questions, please contact me.

Respectfully submitted,



David L. Sieradzki  
Counsel for the Competitive Universal  
Service Coalition

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Enclosures

cc: Commissioner Michael J. Copps  
Jordan Goldstein

**CUSC Presentation to Commissioner Copps:  
Universal Service Issues Before the FCC and the Joint Board**

- ***Competition and Universal Service.*** Local competition is just beginning to get off the ground in rural areas. This progress has been slow and difficult, in part due to sustained regulatory opposition from rural ILECs. For example, in many states it has been very difficult to obtain designation as an ETC; and most states continue to use non-portable, implicit subsidies even though the courts have held such subsidies violate the 1996 Act.
  - Thus, five years after the FCC's initial decision to make all universal service support portable, competitive ETCs using wireless technology are receiving only about 2% of all high-cost support.
  - To eliminate regulatory barriers to entry and to enable competition to develop, all support must be explicit, competitively neutral, and portable. This will benefit residential consumers, particularly in high-cost areas, by enabling them to choose between competitive entrants and incumbents.
- ***Equal Access and the Definition of Universal Service.*** Requiring all ETCs to provide "equal access" would be harmful to consumers.
  - It is no secret that the rural ILECs are pushing for equal access precisely in order to reduce or eliminate wireless carriers' participation in the universal service system, which would enable the ILECs to continue as the monopoly local providers in rural areas.
    - » Consumers would not benefit from a regulatory decision that as a practical matter would eliminate most wireless carriers as direct competitors with ILECs.
  - *"If universal service is about connecting all Americans, is it the consumer or the carrier who decides on the services and the identity of the provider that the consumer can access through that connection?"*
    - » The consumer should be empowered to decide from an array of different carriers, different technologies, different service packages and different side-benefits. Consumers should have the right to decide whether they want to buy local service from an ILEC (including benefits such as equal access, as well as potentially higher data speeds) or from an alternative carrier that may offer a different set of benefits (*i.e.*, mobility, calling plans with large "local" calling areas or combinations of local and long distance minutes, and so on).
    - » Regulators should not force all consumers into identical service packages, which is what an equal access requirement would do. Some consumers may want the opportunity to purchase local and long-distance from different providers; others may prefer the convenience and value of combined local/long-distance packages.
    - » "[T]o the extent that the deployment of equal access has been left to voluntary market choices – that is, in the wireless arena – it has neither been subscribed to by a substantial majority of consumers nor deployed by carriers." (Abernathy Statement)

- » Thus, equal access does not meet the requirements of Section 254(c)(1), because it is not a “service” that consumers have “opted” to purchase through “free market” decisions. Rather, equal access is a legal mandate that courts and regulators imposed on ILECs to prevent them from leveraging their local monopoly power into the long distance market.
- Requiring wireless ETCs to provide equal access would effectively preclude them from offering service packages that include bundles of any-distance minutes.
  - » In order to provide such bundles, wireless carriers must purchase long-distance minutes on a bulk basis from IXCs. They can get significant discounts on these purchases by making volume commitments based on delivering all originating long-distance calls to a selected IXC. An equal access requirement would make it impossible for wireless carriers to obtain such favorable long-distance pricing.
  - » Equal access would be very costly to implement. In addition to the direct cost of installing equal access software in wireless switches, wireless carriers would incur additional costs of obtaining different forms of interconnection with ILECs and IXCs.
  - » Wireless equal access would be administratively difficult or impossible. The Commission has recognized, at least since the 1996 *Local Competition Order*, that wireless carriers’ definitions of which calls are “local” vary significantly from the definitions employed by the ILECs and by state regulators. An equal access requirement would necessitate an FCC determination of which calls are “local” and which calls are “long distance.”
- Rural ILECs do not recover any equal access costs through portable universal service support. Nor are the CALLS (IAS) and MAG (ICLS) universal service funds “relate[d] directly to the provision of interstate access.” Rather, these explicit and portable support funds replaced excessive revenues formerly embedded in non-rural and rural ILECs’ access charges, which were reduced to eliminate these former implicit subsidies.
- ***Retain The Bedrock Principle of Portability of Universal Service Support.*** There is no basis for restricting portability of high-cost support funds.
  - Indeed, the rural ILECs themselves, in the MAG petition, proposed making MAG funding portable to competitive ETCs on a per-line basis. And the Rural Task Force (which included substantial rural ILEC participation) reached a consensus to make all high-costs funds portable between rural ILEC and competitive ETCs on a per-line basis.
  - It is immaterial that competitive ETCs in rural ILEC areas receive portable support based on ILECs’ embedded costs. (But to the extent this matters, the Commission should move toward providing funding to all carriers based on forward-looking costs.)
    - » Portability does not give competitive ETCs a “windfall.” To the contrary, competitive ETCs (new entrants with relatively few customers) generally are likely to have significantly higher embedded costs *per-line* than most ILECs.

- » For over 25 years the FCC has declined to require embedded cost studies from competitive entrants. Portability enables this sensible, deregulatory policy to continue.
- ***Tenth Circuit Remand – “Inducements” to State Universal Service Policy.*** The Tenth Circuit remand order requires the FCC to consider “inducements” to states to develop state universal service programs that complement the FCC’s policies.
  - States should be encouraged or “induced” to designate competitive entrants as ETCs in a competitively and technologically neutral manner, using streamlined procedures comparable to those that were used for designating ILECs.
  - States that want to participate in the federal universal service program should not be allowed to use the ETC designation process to impose non-competitively neutral requirements on wireless or wireline entrants. The ETC designation process must not be used as a way to circumvent Section 332(c) of the Act.
  - States should be encouraged to ensure that any and all intrastate support mechanisms are competitively neutral – *i.e.*, ILECs should not receive explicit or implicit support that is unavailable to competitive entrants.
    - » For example, states that decide to provide support for only a single line per customer should ensure that such support is shared equally among all the ETCs that provide service to a customer, rather than adopting an anti-competitive assumption that the ILEC line is the “primary” line.